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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/044,240 04/07/93 MC HALE

M 1391-1275

EXAMINER

SHERREK, C

ART UNIT

PAPER NUMBER

3

1302

DATE MAILED:

12/27/93

D3M1/1227

JEFFERY M. DUNCAN  
WILLIAM BRINKS OLDS HOFER GILSON & LIONE  
P.O. BOX 10395  
CHICAGO, IL 60610

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☐ Responsive to communication filed on \_\_\_\_\_ ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 0 month(s), 30 days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

**Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:**

- |                                                                                     |                                                                                   |
|-------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|
| 1. <input type="checkbox"/> Notice of References Cited by Examiner, PTO-892.        | 2. <input type="checkbox"/> Notice of Draftsman's Patent Drawing Review, PTO-948. |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449.             | 4. <input type="checkbox"/> Notice of Informal Patent Application, PTO-152.       |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> _____                                                 |

**Part II SUMMARY OF ACTION**

1. ☒ Claims 1-50 are pending in the application.

Of the above, claims \_\_\_\_\_ are withdrawn from consideration.

2. ☐ Claims \_\_\_\_\_ have been cancelled.

3. ☐ Claims \_\_\_\_\_ are allowed.

4. ☐ Claims \_\_\_\_\_ are rejected.

5. ☐ Claims \_\_\_\_\_ are objected to.

6. ☒ Claims 1-50 are subject to restriction or election requirement.

7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8. ☐ Formal drawings are required in response to this Office action.

9. ☐ The corrected or substitute drawings have been received on \_\_\_\_\_. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).

10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on \_\_\_\_\_, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).

11. ☐ The proposed drawing correction, filed \_\_\_\_\_, has been ☐ approved; ☐ disapproved (see explanation).

12. ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. \_\_\_\_\_; filed on \_\_\_\_\_.

13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. ☐ Other

**EXAMINER'S ACTION**

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**Part III DETAILED ACTION**

***Election/Restriction***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

Group I. Claims 1 to 14, drawn to a chewing gum product, classified in Class 426, subclass 003+.

Group II. Claims 15 to 37, drawn to a method of making a multi-phase ~~multi-phase~~ chewing gum, classified in Class 426, subclass 003+.

Group III. Claims 38 to 50, drawn to an apparatus for making a multi-phase chewing gum, classified in Class 425, subclass 130+.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions III and I are related as apparatus and product made. The inventions in this relationship are distinct if either or both of the following can be shown: (1) that the apparatus as claimed is not an obvious apparatus for making the product and the apparatus can be used for making a different product or (2) that the product as claimed can be made by another and materially different apparatus (M.P.E.P. § 806.05(g)). In this case the apparatus is obviously useful in preparing ornamental clay constructions.

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3. Inventions II and III are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (M.P.E.P. § 806.05(e)). In this case the apparatus is obviously useful in preparing ornamental clay constructions.

4. Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (M.P.E.P. § 806.05(f)). In the instant case the product could be made by extrusion and not the specific procedure as set forth in the product claimed.

With the election of any one of Groups I, II, or III applicant is further required to elect an ultimate species of construction, for example, the process or product associated with the procedure of Example 1.

5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art have acquired a separate status in the art because of their recognized

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divergent subject matter, restriction for examination purposes as indicated is proper.

6. Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed. An argument that the claims are linking claims or are amended to be linking claims absent an election consistent with that set forth above will not be considered responsive. As set forth above, the election must be directed to the subject matter of Groups I, II or III together with the election of an ultimate species.

7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(h).

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis Sherrer whose telephone number is (703) 308-3847.

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Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0651.

Curt Sherrer

December 23, 1993

  
JOSEPH COLIAN  
PRIMARY EXAMINER  
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